IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/08/2004

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.1003 of 2003
W.P.No.1004 of 2003
AND
W.P.No.1003 of 2003

M.Sailappan ..Petitioner

-Vs-

1. Executive Officer,
Selection Grade Panchayat,
Ambasamudram,
Ambasamudram 627 401.
Tirunelveli District.

2. S. Periasamy

3. The Inspector of Police,
Ambasamudram Police Station,
Ambasamudram 627 401.
Tirunelveli District. ..Respondents.

W.P.No.1004 of 2003

C.Shanmugam Pillai ..Petitioner

-Vs-

1. Executive Officer,
Selection Grade Panchayat,
Ambasamudram,
Ambasamudram 627 401.
Tirunelveli District.

2. Somu Ammal

3. S.Periasamy

4. S.Aruna Shanmuganathan

5. The Inspector of Police,
Ambasamudram Police Station,

Ambasamudram 627 401.
Tirunelveli District. ..Respondents.

Petitions filed under Article 226 of the Constitution of India
to issue a Writ of Certiorarified Mandamus to call for the records relating to
the notice in Rc.No.A3/1114/02 dated 20.12.2002 passed by the Executive
Officer, Selection Grade Panchayat, Ambasamudram, Ambasamudram 627 401,
Tirunelveli District (the first respondent herein) and to quash the same and
direct the respondents herein to restore the building bearing Door No.148,
West Car Street, Ambasamduram 627 401, Tirunelveli District and Door No.140,
West Car Street, Ambasamduram 627 401, Tirunelveli District respectively at
their costs and expenses with such compensation to the petitioner as may be
fixed by this Honourable Court.
For Petitioners in both the W.Ps. : Mr.S.Subbiah
For Respondents : Mr.P.S.Jayakumar, for R1 and R3 in
WP.1003/2003 and for R1 and R5 in
W.P.1004/2003
Mr.R.S.Ramanathan for R2 in WP.1003/2003
and for R2 to R4 in W.P.1004/2003

:COMMON ORDER
This judgment shall govern both the writ petitions. Both the writ
petitions have been broughtforth before this Court by the petitioners herein
seeking to issue a Writ of Certioarified Mandamus quashing the notice in
Rc.No.A3/1114/02 dated 20.12.2002 passed by the first respondent, Executive
Officer, Selection Grade Panchayat, Ambasamudram, Ambasamudram 627 401,
Tirunelveli District and apart from that to issue a direction to the
respondents to restore the building which they have occupied as tenants under
the 2nd respondent and respondents 2 to 4 respectively.
2. From the averments made in the affidavit filed in support of the
writ petitions, the submissions made by the learned counsel for the
petitioners and the counter affidavit filed by the respondents, the following
facts are noticed.
3. The petitioners are the tenants under the 2nd respondent in
respect of the premises situated in Door No.148 West Car Street, Ambasamduram
 627 401, Tirunelveli District and under the respondents 2 to 4 in respect of
the premises situated in Door No.140 West Car Street, Ambasamduram 627 401,
Tirunelveli District respectively under the Tenancy Agreements. While that be
so, the petitioners filed Original Suits before the District Munsif Court,
Ambasam udram, alleging that there was an attempt of infringement of rights as
tenants and further interference of possession, for which Interlocutary
applications have been filed seeking interim injunction. Both the
applications were allowed and the interim injunctions granted were made
absolute. Whileso, the first respondent received a letter from Inspector of
Police of the said place on 27.11.2002 stating that in the building bricks had
fallen down causing injuries to some persons and that there is imminent danger
which has to be looked into immediately by the said Officer. On receipt of
the same, the Executive Officer, the first respondent served notices to the
owners of the building on 28.11.2002 under Section 218 of the District
Municipality Act 1920 that the building has to be immediately removed in view
of the imminent danger which is likely to be caused to the public. Since it

was not removed, he sought for the legal opinion of the Government Pleader. On 20.12.20 02 at about 8.00 p.m., the first respondent served a notice on the petitioners that they should remove their materials and belongings from the said buildings before the dawn of 21.12.2002. The next morning at about 8.00 a.m. in the presence of owners of the building, the Sub-Inspector of Police, and the petitioners herein, the buildings were demolished by the Executive Officer by his staff. Under the circumstances, the above writ petitions have been broughtforth complaining that the first respondent had acted in malice, acted in excess and also acted in connivance with other respondents. Hence, the petitioners seek to quash the above notice of the first respondent apart from that they have also sought for a direction to respondents to restore the buildings enabling the petitioners to occupy the same.

4. After careful consideration of the materials available and hearing the rival submissions, the Court is of the considered opinion that the petitioners in both the writ petitions are not entitled to either of the reliefs asked for. It is not in dispute that both these petitioners are tenants under the 2nd respondent i.e., in respect of the premises mentioned in both the petitions. From the available material, it could be seen that the petitioners have already filed two original suits complaining the alleged infringement of rights as tenants against the 2nd respondent and respondents 2 to 4 respectively / owner of the buildings and interim injunctions were also granted. It is pertinent to point out that the first respondent/ Executive Officer of the Panchayat was not a party to those proceedings. The Inspector of Police of the concerned place has sent a letter to the first respondent, Executive officer on 27.11.2002 wherein they have categorically stated that the building was in a dangerous condition and in view of the fact that the bricks had fallen down and had caused injuries to the public, immediate action should be taken by the Executive Officer. On receipt of the letter, the first respondent/ Executive Officer had issued a notice to the 2nd respondent, owner of the building calling upon him to demolish and remove the building in view of the dilapidated condition of the building and also stating that its existence endangers the public. Even after receipt of the same, the second respondent owner of the building did not take any steps at all. Under such circumstances, the first respondent/Executive Officer has obtained opinion of the Government Pleader and after obtaining the opinion, he served caution notice on the petitioners on 20.12.2002 stating that the buildings are to be demolished and hence they have to remove all the materials therefrom and they have given time till next day morning. The same was not disputed by the petitioners side stating that the said notice were served on them at 8.00 p.m. on 20.12.2002. At this juncture, it is pertinent to point out that that the petitioners have given letters to the Executive Officer stating that they have removed all their belongings and kept the premises vacant. Only after receipt of the said letters, the first respondent proceeded to demolish the buildings. Hence, the contention of the learned counsel for the petitioners that the first respondent/ Executive Officer had acted in a malafide manner and in connivance with the other respondents, cannot be countenanced for the simple reason that the buildings were owned by the 2nd respondent(W.P.1003/2003) and respondents 2 to 4 (W.P.1004/2004) respectively and at no stretch of imagination, they would have gone to the first respondent calling upon him to issue caution notice and cause demolition of their buildings, and that apart, as could be seen from the available materials, the petitioners have given

letter to the first respondent that they have removed all the materials therefrom so that the first respondent could demolish the buildings. Learned counsel had stated in the affidavit filed before this Court, that the circumstances are that n o other options were left to them except to remove the belongings in order to save them and hence, they have also given such letters. The same cannot be accepted for the reason that the reading of the letter would clearly indicate that it would not have been given except under ordinary course of things. The contention of the learned counsel for the petitioners that the first respondent had acted in excess of power under Section 218 of the Tamil Nadu District Municipalities Act, cannot be countenanced. Section 218 of the Tamil Nadu District Municipalities Act reads as follows:

218. Precautions in the case of dangerous structures:- (1) If any structure appears to the executive authority to be in a ruinous state and dangerous to the passers-by or to the occupiers of neighbouring structures the executive authority may by notice require the owner or occupier to fence off, take down, secure or repairs such structure so as to prevent any danger therefrom.

(2) If immediate action is necessary the executive authority shall himself before giving such notice or before the period of such notice expires, fence off, take down, secure or repair such structure or fence off a part of any street or take such temporary measures as he thinks fit to prevent danger and the cost of doing so shall be recoverable from the owner or occupier in the manner provided in Section 344.

(3) If in the opinion of the executive authority the said structure is imminently dangerous to the inmates thereof, the executive authority shall order the immediate evacuation thereof and any person disobeying may be removed by any police officer.

5. It has to be pointed out that a reading of the said provision would clearly indicate that the deciding authority is the Executive Officer concerned who has to decide whether it is dangerous to persons or property and not the tax payer. In the instant case, sufficient opportunity was given to the 2nd respondent (W.P.1003/2003) and respondents 2 to 4 (W.P.1004/2004) respectively/ owners of the building by the Executive Officer/ first respondent to cause demolition of the building and to remove the same, but, they have not done so. The scheme of this Act is that it is for the Municipality or the Officer to decide not only whether the building is in ruinous condition or dangerous to persons or property but also whether the demolition is necessary or repairs would be suffice. In the present case, inspection has been done and the condition of danger to the public was noted and apart from that, the first respondent had also received letters from the concerned Inspector of Police and Sub-Inspector of Police respectively. Under such circumstances, the first respondent issued notice to the owners who had not cared to remove the same. Therefore, it cannot be stated that the first respondent had acted in excess of power or in a malafide manner or in connivance with the other respondents. The facts and circumstances of the case would clearly indicate that the condition of the building was imminently dangerous to the public which required demolition immediately. Only after giving sufficient opportunity to the owners and the tenants/ petitioners herein for removal of their materials, the first respondent demolished the building through his staff. The Court is unable to notice any reason to

declare the notice of the first respondent as invalid and to call for any interference for the act done by the first respondent and to grant the relief asked for by the petitioners . In view of the facts and circumstances of the case, both the writ petitions are dismissed leaving the parties to bear their costs.

Index :Yes
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To

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Selection Grade Panchayat,
Ambasamudram,
Ambasamudram 627 401.
Tirunelveli District.

2. The Inspector of Police,
Ambasamudram Police Station,
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